

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Boulder Regional Emergency Telephone)	PS Docket No. 19-254
Service Authority Petitions)	
)	

REPLY COMMENTS OF VERIZON

The record here shows the important benefits of full interoperability to advancing public safety. These include the benefits that competition and innovation will bring to the public safety community, particularly as companies deploy new 5G services and networks, and the practical “on the ground” implications for first responders and other public safety agencies.¹ But FirstNet and AT&T try to avoid the subject altogether, contending incorrectly that the Commission’s hands are tied and it may not even clarify the legal meaning of term in its organic statute. The Commission can and should do so pursuant to its authority under both the Spectrum Act and the Communications Act. As Verizon explains here and in its comments, full interoperability will serve first responders’ and Congress’s objectives more effectively than FirstNet and AT&T’s restricted and proprietary approach—which risks perpetuating the 9/11 communications problem FirstNet was created to help solve.

¹ Verizon Comments at 2-7; Southern Linc and C Spire Comments at 4-6; Minnesota Dept. of Pub Safety Emergency Communication Networks at 7; Mutualink, Inc. Comments at 3-4; The Digital Decision Comments at 2-3.

I. FULL INTEROPERABILITY WOULD MOST EFFECTIVELY MEET CONGRESS’S PUBLIC SAFETY OBJECTIVES.

AT&T and FirstNet assert incorrectly that Congress’s directive to FirstNet to establish the NPSBN as a single “network,” and the conclusion of state governments’ opportunity to “opt-out” of the FirstNet program, preclude the Commission from considering BRETSA’s petition and clarifying the scope of the statutory term “interoperable.”² The plain language of the Spectrum Act and the Commission’s Title III authority under the Communications Act support neither argument.

A. The Spectrum Act Does Not Restrict Interoperability to FirstNet’s Band 14 Network.

The Spectrum Act requires that FirstNet “ensure the establishment of a nationwide, interoperable public safety broadband network” that is “based on a single, national network architecture that evolves with technological advancements,” and to “take all actions necessary to ensure the building, deployment, and operation of the nationwide public safety broadband network”³ FirstNet’s authority to perform this duty, however, applies (and the Commission’s authority is restricted) only where particular responsibilities are “expressly required to be carried out by” FirstNet.⁴ FirstNet’s authority does not include dictating what constitutes “interoperable” under the statute.

AT&T and FirstNet both seize on the term “single” as implying that interoperability only relates to the mobile broadband service FirstNet provides over its network. But the Spectrum

² AT&T Comments at 6-7, FirstNet Comments at 4, 5 n.19, 10.

³ 47 U.S.C. § 1426.

⁴ *Id.* § 1403(b)(1).

Act does not define the term.⁵ A more plausible reading of FirstNet’s *express*⁶ authority is that that language unremarkably reflects Congress’s expectation that FirstNet, as the *single* licensee for Band 14 spectrum and a *single* legal entity, would deploy a *single* nationwide network. It says nothing about what the term “interoperable” means, much less the network(s) with which the NPSBN must be interoperable.

According to AT&T, the term means “interoperable across and within the [NPSBN], meaning that any user on the NPSBN has full interoperability with every other user of the network.”⁷ But if that is what Congress intended, it could have simply required that FirstNet build a “single network;” there would be no need for “interoperable” as a modifier.⁸ AT&T itself has made its commercial Band 13 network interoperable with FirstNet. Indeed, other provisions of the Spectrum Act support a more encompassing view of interoperability.

For example, the Spectrum Act tasked the Public Safety Interoperability Board with developing the “minimum *technical* requirements” for interoperability, and acknowledged that

⁵ See *id.* § 1401.

⁶ Black’s Law Dictionary has defined “express” as: “Clear; definite, explicit; plain; direct; unmistakable; not dubious or ambiguous. Declared in terms; set forth in words. Directly and distinctly stated. Made known distinctly and explicitly, and not left to inference. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct.” BLACK’S LAW DICTIONARY 580 (6th ed. 1990); see also thelawdictionary.org/express/ (“Made known distinctly and explicitly, and not left to inference or implication. Declared in terms; set forth in words. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct.”). A dictionary definition is permissible to supply meanings to undefined terms, see *Carmichael v. The Payment Center, Inc.*, 336 F.3d 636, 640 (7th Cir. 2003) (citing *FDIC v. Meyer*, 510 U.S. 471, 476 (1994)), and several courts have applied this principle to the term “express.” See, e.g., *Mulford v. Altria Group, Inc.*, 506 F. Supp. 2d 733, 755 (D.N.M. 2007); *Dauids v. Coyhis*, 869 F. Supp. 1401, 1408-09 (D.D.C. 1994).

⁷ AT&T Comments at 4-5.

⁸ Under this tortured interpretation, Verizon provides its customers on different spectrum bands or geographic areas “interoperability” with one another on its network.

broad policy questions about the meaning of interoperability were outside its purview.⁹ In particular, the Board noted the distinction between its technical recommendations and the broader SAFECOM program definition.¹⁰ Interoperability thus means something beyond mere “technical” interoperability. The NPSBN architecture also must “be based on commercial standards” for LTE, defined as “the technical standards followed by the commercial mobile service and commercial mobile data service industries for network, device, and Internet Protocol connectivity.”¹¹ If FirstNet were directed to deploy a proprietary network, it would not need to adhere to commercial standards which, by their very nature, enable interoperability.

FirstNet’s mandate to broadly support competition in the equipment marketplace, including devices, would be undercut if FirstNet were the *de facto* sole source buyer for public safety communications network and handset equipment. Also, that mandate encompasses compatibility “with existing commercial *networks*” in the plural, without limiting the term “networks” to FirstNet’s partner.¹² And Congress did not define the NPSBN in a static way, as it must “evolve[] with technical advancements” and must “*initially* consist[] of” the core and RAN

⁹ 47 U.S.C. § 1423(c)(1) (emphasis added).

¹⁰ See Public Safety Interoperability Board, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*, Final Report, § 3.2 (2012).

¹¹ 47 U.S.C. §§ 1401(10), 1422(b)(1)-(2), 1423.

¹² *Id.* § 1426(b)(2) (emphasis added). FirstNet must “promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be—(i) built to open, non-proprietary, commercially available standards; (ii) capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band; and (iii) backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable” *Id.*

components described in the Act.¹³ Congress thus did not define the “single network” as constrictively as FirstNet and AT&T argue, and rather than precluding “interoperability” from meaning “full interoperability,” the Spectrum Act does not preclude the Commission from finding that full interoperability is consistent with the statute. Indeed, FirstNet itself acknowledges that “interoperability typically implies interchangeability (e.g., ability to put a new SIM card in a phone *to move from one broadband carrier to another.*)”¹⁴ The Commission should clarify that FirstNet must adhere to this plain meaning standard of interoperability.

B. The Commission’s Authority to Clarify the Statutory Term Did Not Expire with the End of the State Opt-Out Framework.

AT&T and FirstNet also argue that the Spectrum Act’s state opt-out framework, and the Commission’s proceeding implementing it, support their restrictive approach to interoperability. But the state opt-out framework cuts the other way. FirstNet describes interoperability as occurring between the network that FirstNet deployed and the network that an opt-out state would have deployed.¹⁵ Yet in its October 2015 “final interpretations,” FirstNet stated that the Spectrum Act “only refers to the ‘nationwide public safety broadband network’ or the ‘network,’ without expressly indicating whether such State RANs are included in the term” and ultimately found that “a RAN, regardless of what entity actually deploys it, is a component of the overall NPSBN.”¹⁶ FirstNet cannot have it both ways: interoperability relates to either a single NPSBN, as it concluded in its final interpretations, or to multiple networks (FirstNet’s and an opt-out

¹³ *Id.* § 1422(b) (emphasis added).

¹⁴ FirstNet Comments at 12 (emphasis added).

¹⁵ *Id.* at 9 (“scope of [Commission’s] interoperability jurisprudence was related to opt-out RAN interoperability with” the NPSBN).

¹⁶ 80 Fed. Reg. 63504, 63509 (Oct. 20, 2015).

state's), as it describes in its comments and is applying in practice to AT&T's commercial network. As FirstNet acknowledges, the Communications Act and Spectrum Act leave the question unanswered, and this proceeding provides the Commission an opportunity to clarify it.

FirstNet also asserts that the Commission “has already rightfully concluded that the scope of its interoperability jurisprudence was related to opt-out RAN interoperability with the” NSPBN.¹⁷ But the Commission's focus in those decisions was on its defined responsibilities under 47 U.S.C. § 6302(e)(3)(C)), and moreover emphasized that “[its] review of state plans under both prongs one and two *will be a purely technical review*.”¹⁸ The Commission's actions there said nothing about what “interoperability” means beyond *technical* interoperability, and the Commission did not purport to address the scope of its authority under the Communications Act more broadly.

C. The Spectrum Act Does Not Support FirstNet's Expansive View of its Own Regulatory and Rulemaking Authority.

FirstNet asserts that “[t]o the extent any declarations, rules, or policies for the NPSBN related to interoperability, roaming, or prioritization are warranted, [FirstNet] has that exclusive authority” and cites to its issuance of “final legal interpretations [in October 2015] on certain matters related to interoperability”¹⁹ AT&T similarly asserts the Commission has

¹⁷ FirstNet Comments at 9.

¹⁸ See *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Report and Order, 32 FCC Rcd 5311, ¶ 2 (2017) (“adopt[ing] procedures for administering the state opt-out process as provided under the Public Safety Spectrum Act, [and] delineating the specific standards by which the Commission will evaluate state opt-out applications”); *id.* ¶ 65.

¹⁹ FirstNet Comments at 7 n.24.

acknowledged that FirstNet has “exclusive authority to oversee the NPSBN.”²⁰ In adopting those final legal interpretations, however, FirstNet acknowledged that the Spectrum Act exempts FirstNet from the requirements of the Administrative Procedure Act,²¹ and that its legal interpretations of its Spectrum Act responsibilities were intended “to help *guide* FirstNet’s efforts in achieving its mission.”²² Neither FirstNet nor NTIA indicated a belief that this guidance has the force of a binding rule, as FirstNet now suggests in its comments.

Nor does the Spectrum Act enable FirstNet to ride NTIA’s coattails to implement binding rules or declarations. NTIA’s rulemaking authority is limited to regulations “necessary to carry out the functions assigned under this chapter” (which is a different “chapter” than the Spectrum Act) and is limited “to assign[ing] frequencies to radio stations or classes of radio stations *belonging to and operated by the United States.*”²³ FirstNet’s 758-769 MHz and 788-799 MHz bands are “non-Federal” for purposes of NTIA’s and the Commission’s rules.²⁴ And neither party attempts to reconcile these assertions with the preservation of the Commission’s broad Title III authority under the Communications Act (again, except where FirstNet is “expressly” tasked with the responsibility). In fact, the Commission’s relied on its Title III authority to impose Part 90 technical regulations for FirstNet.²⁵

²⁰ AT&T Comments at 10-11.

²¹ 47 U.S.C. § 1426(d)(2).

²² 80 Fed. Reg. at 63505 (emphasis added).

²³ 47 U.S.C. §§ 902, 904(c)(1) (emphasis added).

²⁴ See 47 C.F.R. § 2.103(c) and Part 90.

²⁵ See *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band Service Rules for the 698-746, 747-762 and 777- 792 MHz Bands*, Second Report and Order, 28 FCC Rcd 15174, ¶¶ 34, 40, 58 (2013).

FirstNet notes that it has express authority to “negotiate and enter into” roaming and prioritization agreements with commercial wireless providers, but this is a far cry from authority to issue binding legal declarations and rules. FirstNet’s express powers instead focus on administrative and business-related activities, not policymaking or substantive interpretations of the statute and its own underlying regulatory obligations. This makes sense, as FirstNet’s Spectrum Act duties are largely identical to those that would have been delegated to the District of Columbia corporation established under Senator Rockefeller’s original legislation.²⁶ FirstNet’s authority to “take such other actions” relates back only to those expressly-stated duties. In contrast, Congress preserved the Commission’s authority in this regard to “*take any action necessary* to assist the First Responder Network Authority in effectuating its duties and responsibilities under this subchapter.”²⁷

II. FULL INTEROPERABILITY WILL IMPROVE THE PUBLIC SAFETY MARKETPLACE FOR FIRST RESPONDERS, NOT UNDERMINE FIRSTNET’S MISSION.

AT&T and FirstNet assert that full interoperability would undermine FirstNet’s ability to fulfill its mission. Full interoperability “done right,” however, will easily prevent those outcomes, and the Spectrum Act itself protects first responders against these risks. According to AT&T, full interoperability would make the NPSBN “merely one island in a sea of disparate networks that would undermine the ability of first responders to communicate.”²⁸ By that reasoning, though, interoperability between FirstNet’s Band 14 network and AT&T’s Band 13 commercial LTE network, which they consistently describe as discrete networks, would create

²⁶ *Public Safety Spectrum and Wireless Innovation Act*, S. 911, §§ 202, 206(b)-(c) (as reported to the Senate Nov. 14, 2012); S. Rep. 112-260, 27-31 (2012).

²⁷ 47 U.S.C. § 1433 (emphasis added).

²⁸ AT&T Comments at 7.

the same problem. And as AT&T notes in its comments, “the NPSBN is being built based on open industry standards—the same standards that apply to commercial 4G networks” and AT&T itself “supports a wide array of open IP-based standards that provide subscribers with a variety of options” for LTE-LMR interoperability.²⁹ As Verizon explained, full interoperability necessarily would be standards-based so the risk of disparate networks, if any, is minimal.

AT&T also asserts that full interoperability would jeopardize the NPSBN’s security and reliability.³⁰ As Verizon explained, however, full interoperability would provide first responders, including those subscribing to FirstNet, with another level of redundancy that they would not enjoy under FirstNet’s current configuration. Verizon agrees with AT&T that security is critical, and standards-based deployment (a component of full interoperability) and good faith negotiations between service providers will address that need. FirstNet similarly argues that full interoperability would allow competitors “access to the unique applications and services that will be developed for the NPSBN.”³¹ But this is hyperbole. Full interoperability would simply allow seamless communication and priority/preemption capabilities for voice, video and data. FirstNet would remain free to offer proprietary applications and services to its users through a variety of logical and physical means.

²⁹ *Id.* at 12.

³⁰ *Id.* at 8.

³¹ FirstNet Comments at 9.

III. CONCLUSION

For the foregoing reasons, the Commission should grant BRETSA's declaratory ruling request to the extent described in Verizon's comments.

Respectfully submitted,

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